

FEDERALISM IN SWITZERLAND

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THERE are few words more currently used in contemporary political discussions than that of federalism. And yet, strangely enough, the term has extremely different and even contradictory connotations in various times and places.

Thus in the early period of the United States, the federalist party was that which advocated a strong federal authority. Today in Switzerland, on the contrary, while everyone proclaims his belief in federalism, it is the defenders of cantonal autonomy and therefore the opponents of greater national centralization who are specifically known as federalists. In France, ever since the days of the Revolution, federalism has been more or less associated with the Girondist resistance to the policies of the Jacobins and is therefore sometimes denounced as reactionary. Since, on the other hand, the revolutionary Proudhon declared that "the twentieth century will open the era of federations", the term has also in French an individualistic and for some even an anarchical flavour. But while deprecating federalism for France, as contrary to national democratic unity and as smacking of separatism, French policy favours it for Germany. Beyond the Rhine, however, the ideal of federalism finds little popular support. It is there associated with the historical recollections of a particularist Germany, whose traditional weakness was overcome only by the foundation of the unitary Reich.

In Great Britain, the verbal confusion appears no less complete than in the rest of the world. Whereas some have described the Commonwealth as a peculiarly successful mode of international federalism, in Strasbourg the British delegation seems well-nigh unanimous in favouring a functional as opposed

to a federal approach to the problem of Europe. Indeed, under the onslaught of the continental federalists on the British position, federalism in British eyes has, it would seem, come to be considered with real suspicion and indeed not without serious misgivings. Has not so moderate, so intelligent and so discriminating an observer as the editor of the London *Economist* recently spoken of "the dangerous and difficult principles of federalism"?

All this goes to show, not of course that some are right and others wrong, either in their use of the term or in their opinions on the merits of the institution, but that there is much confusion about the whole subject. Words, like bank-notes, have only a conventional value. But as trade is impossible without at least some measure of agreement on the purchasing power of money, so the discussions about federalism are bound to generate only heated misunderstanding unless and until the term receives some generally recognized acceptance.

In attempting to show how it is understood in Switzerland today, I have no other purpose than to clear the way for an understanding of the institution as it has been in existence at the foot of the Alps for the last century. I do not dream of claiming that this is the only proper definition of the term. Still less am I bold enough to pretend that the institution thus defined, because it counts practically no enemies in my country today, therefore offers the only or even a possible solution of the so-called European problem.

May I be allowed to note, in parentheses, that disagreements about the merits of a federal solution of the problem of Europe spring from misunderstandings about Europe no less than about federalism? Do we take Europe in the sense in which Secretary of State Marshall defined it, as "everything west of Asia, including Russia and Great Britain"? Do we confine it to what is west of the Iron Curtain? Do we identify it with the Atlantic community? Or do we wish to extend its boundaries to include all those who trace their ancestry back to natives of the European continent?

It is obvious that the federal solution of the European problem will vary at least as much according to what is under-

stood by Europe as according to what is meant by federalism. But that lies quite beyond the scope of this article.

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In order fully to comprehend why and how the Swiss today look upon their country as a federal State, one must recall its historical antecedents.

Since the Middle Ages and for over five centuries, the so-called Swiss Confederation was not much more than an alliance of sovereign, urban and rural, communities. These communities, which since the fifteenth century came to be known as cantons, although very unequal in population, wealth and power, enjoyed absolutely equal political rights. Equally represented in the federal Diet, whose frail authority was based on the principle of the unanimity of its members, they could therefore not be coerced even by an overwhelming majority of their allies.

It is thus, as a very loose commonwealth, in many ways comparable to the European or the international community today, that Switzerland lived, prospered, or at least "muddled through" until 1798.

Invaded by the armies of revolutionary France in that year, she was, under the stress of foreign occupation and against the manifest will of her people, over-night brutally transformed into a unitary State, known as the Helvetic Republic, one and indivisible.

So obviously contrary to the needs as well as to the traditions of the country was this régime that Bonaparte, interested as he was in the tranquillity of Switzerland for reasons of French policy, shortly put an end to it. After a rapid but exceptionally penetrating survey of the Swiss position, he declared in a statement addressed to the cantons on 10th December, 1802:

Switzerland resembles no other State. The events which have taken place there since several centuries, her geographical and topographical position, her various languages and religions, and that extreme variety of customs which distinguish her population, all combine to make your State federal.

"La nature a fait votre Etat fédératif", such were his exact words. They are well worth quoting here as the expression of the considered judgment of perhaps the shrewdest of the countless foreign observers who throughout the ages have shown interest in the little Alpine republic.

What Napoleon meant is both clear and obviously sound. In a country as diversified as Switzerland, structural unity can be imposed only at the expense of moral union. But impotence and anarchy can be avoided only if the various parts are subjected to the common rule of a national government which represents them all. While respecting the local peculiarities of each, such a government must be endowed with a measure of authority strong enough to protect them all and, if need be, to coerce the recalcitrants. But that authority must not be extended beyond matters of strictly national concern.

In accordance with this conception, which is still prevalent in Switzerland today, Napoleon inspired and practically dictated a federal constitution. While re-establishing cantonal governments responsible for all local administration, this so-called Act of Mediation reserved for a reconstituted but reformed national Diet exclusive rights only in such fields as those of foreign affairs, military security and essential public works and services.

Even if it cannot flatter their national pride, the Swiss people must recognize, therefore, that they owe the essence of the political institutions which have proved best adapted to their purposes to the intervention of a foreign dictator. However, the Act of Mediation of 1803 could naturally not survive its author. After the fall of Napoleon and under the influence of his victorious foes, a reactionary constitution was framed in 1815.

While the cantons almost completely regained their ancient sovereignty, the national State was again reduced to comparative impotence. This régime, however, proved so unpopular that, after the democratic revolutions which triumphed in most of the cantons as an indirect result of the events in Paris in 1830, the Diet by a majority vote resolved to revise the pact of 1815.

In spite of prolonged controversy throughout the country and annually repeated debates in the federal Diet, no effective progress was achieved until 1848. Although there was from the start a strong majority in favour of doing away with the existing constitution, there was no agreement whatever on the plans for the future. Who—the Diet, the cantonal governments, or a popularly elected constituent assembly—was to undertake the constitutional revision? Under what conditions—a popular majority, a plurality of cantons, or a unanimous decision on their part—could the reform be legally effected? Where was the supreme power to rest? Was the federal Diet to be maintained and, if so, were the very unequal cantons to continue to enjoy equal representation thereon? Or was the country as a whole to be subjected to the authority of a single, popularly elected legislature, as each of the cantons had ever been? Were the local governments to be maintained and, if so—a point on which there was practically universal agreement—what was the measure and the nature of their traditional powers which they were to relinquish in favour of a central government?

The larger cantons were inclined to favour revision by a national constituent assembly, or at least by the will of a popular majority as expressed by a plurality in the Diet. The smaller, and especially the Catholic, cantons opposed these views. They held that, as the pact of 1815 was in the nature of an international treaty, it could be validly revised only by the unanimous consent of its signatories.

Furthermore, the larger cantons were not unnaturally in favour of a greater measure of centralization, on the express condition of course that the supreme authority of the land should rest with a democratically elected legislature, over which, by reason of their preponderant population, they would wield a controlling influence. The smaller cantons, on the other hand, were most reluctant to forfeit the equality of rights which had for centuries been their traditional privilege. Whereas those of the German-speaking cantons which were of the Protestant faith were generally in favour of a larger measure of national centralization, the two distinct

linguistic and religious minorities, realizing that federalism in the sense of local autonomy was their best defence, were as a whole opposed to it.

Besides this treble antagonism—the greater versus the smaller cantons, the Catholics versus the Protestant, and the French and Italian-speaking minorities versus the German-speaking majority—there was also a political conflict within many of the cantons. The more democratic elements of the population were in general in favour of a radical change, while the more conservatively-minded classes feared it as a threat to their remaining privileges and local prestige.

After protracted and ever reopened debates had produced a general feeling of discontent, discouragement, frustration and, in some quarters, of revolt, matters finally came to a head in 1847.

The minority of Catholic cantons, feeling increasingly menaced by the persistent will of the radical majority to extend the powers of the national State, formed among themselves a separate alliance for their mutual protection. This so-called *Sonderbund*, favoured as it was by the conservative cabinets in Vienna and Paris, in turn aroused the suspicions and apprehensions of the Protestant majority. Thereupon, in the summer of 1847, the Diet, by a narrow majority, took three fateful decisions. First, it proclaimed the dissolution of the *Sonderbund*. Secondly, it voted the exclusion from the whole of Switzerland of the Order of Jesuits, whom Lucerne had recently admitted and whose influence was deemed incompatible with the internal peace of a country of mixed creeds. Finally the Diet, by the same majority, set up a committee to draft a revised federal constitution. It was composed of one representative of each of the concurring cantons, but its members were instructed by the Diet to sit not as cantonal delegates but as federal experts.

After these three crushing defeats, the Catholic minority withdrew from the Diet. A brief civil war ensued, from which the majority emerged completely victorious.

The constituent committee, which had not yet begun its labours, was enlarged to include a member from each of the

defeated cantons who consented to co-operate. Formed of the leading statesmen of the country, it wisely decided to meet in private so as to avoid undue pressure from without. After a few weeks of very assiduous labours, it thus succeeded in producing a unanimous draft which, submitted first to the Diet and then to the people themselves at the polls, proved acceptable to a majority of about two-thirds of both.

The federal constitution of 1848, as it has since come to be known and as it is in its major features still in force today, was clearly a work of compromise. For reasons very similar to those which had led the American States to adopt their bi-cameral system sixty years before, the Swiss constitution of 1848 is based on the principle of equal representation of the cantons and of the people. In order to secure the approval of the majority of the former and as a sop to the conservative defenders of the traditional Diet, an upper house, called the Council of States, was set up in which each canton, large or small, has two representatives. In order to reconcile the thorough-going democrats, the real opponents of the pact of 1815, with this important concession, a National Council was created in which each canton is represented on the basis of its population. Unlike the American constitution, its Swiss counterpart provides that both houses should enjoy exactly the same powers. No legislation can be enacted unless it be approved by a distinct majority in each of them. Sitting apart for the transaction of all ordinary business, the two houses meet together, under the chairmanship of the President of the National Council, only in exceptional cases. Thus the members of the Federal Council—the executive—and the Federal Tribunal—the judiciary—are elected by the so-called Federal Assembly.

It can be no part of this brief paper to analyse even summarily the contents of the Swiss federal constitution of 1848. May it suffice to mention three points in conclusion.

The first refers to the division of powers and functions established in 1848 between the federal State, still officially called the Swiss Confederation, and the cantons, still officially referred to as "States" and as "sovereign". All these obvious

misnomers are to be explained only by the deliberate desire of the commission of 1848 not uselessly to offend the sense of historical continuity which is characteristic of the Swiss people. Accordingly Article 3 of the constitution of 1848, which is still in force today, reads as follows:

The cantons are sovereign in so far as their sovereignty is not limited by the federal constitution, and, as such, they exercise all the rights which have not been delegated to the federal power.

These delegated powers related essentially to the conduct of foreign affairs, to the settlement of inter-cantonal disputes, to national defence, to public works of national importance, to the regulation of foreign trade and the tariff, to the administration of the postal services, to the unification of the currency and of weights and measures, and to the guarantee of certain fundamental rights, such as freedom of establishment, of religion, of the press, of association, and of petition.

Almost all other matters, notably those concerning police, justice, public instruction, roads, health, etc., remained under the jurisdiction of the cantons.

The second point to be noted is the constitutional evolution of Switzerland during the last century. Its general trend has been to extend the powers and responsibilities of the federal State, notably in the sphere of social, economic, and legal matters. This extension has proceeded with the co-operation of the cantons, but at the expense of their authority, and for the benefit of the individual, but at the expense of his personal freedom. It is in the ever-continuing debates as to the legitimate spheres of influence of the federal State and of the cantons that the antagonism persists between the so-called federalists and the so-called centralists in Switzerland today. The latter, who are strongest in the larger cantons and in the Protestant and German-speaking parts of the population, have promoted the evolution towards more national unity. The former, who on the whole represent the smaller cantons and the linguistic and religious minorities, have tended to oppose it. Although the trend towards centralization, naturally favoured by the increased mobility of the population, by

technical, commercial and industrial progress, and notably also by the course of international events, has been uninterrupted, the principle of the local autonomy of the cantons has been respected and in its essentials is not even today seriously threatened by the ruling parties.

The third and final point which must be stressed is the growing favour which the federal system, as above outlined, has enjoyed in Switzerland ever since its establishment in 1848. At the time of its adoption, a century ago, it had aroused much criticism and no enthusiasm. It was reluctantly accepted as a regrettable but inevitable compromise and as a necessary escape from a condition of national impotence which had become intolerable. Today, on the contrary, its fundamental principles are universally acclaimed as wise, fair and beneficent. It is in no slight measure to the judicious division of power between the federal State and the cantons established in 1848, that the Swiss people attribute the freedom, the internal peace and harmony, the external security and the enhanced prosperity, which they have enjoyed ever since. Although, as we have observed, there remain divergencies of views as to the desirability of more or less federal power and more or less cantonal liberty, they relate only to questions of measure and of rhythm of progress. As a principle, federalism has long ceased to be an issue in Swiss politics. In fact, it is one of the few political tenets on which there is today a complete consensus of opinion.

In 1848 the idea of a federal bi-cameral State, based on an equal division of power between the cantons and the people, was felt to be entirely alien to the five-century old traditions of the venerable alliance of uni-cameral sovereign Swiss communities. Today it is accepted by all as a matter of course. Indeed, it has become an essential feature of the national life and heritage. This is so true that, on patriotic occasions, Swiss federalism is often stressed in public addresses as one of the reasons which justify the ardent love of their country, characteristic of the citizens of the oldest existing republic.